



Reprinted
February 13, 2009

HOUSE BILL No. 1338

DIGEST OF HB 1338 (Updated February 12, 2009 1:35 pm - DI 92)

Citations Affected: IC 5-28; IC 6-3.1; noncode.

Synopsis: Incentives provided by the IEDC. Requires the Indiana economic development corporation (IEDC) to provide an annual report on the effectiveness of incentives and incentive payback activity. Provides that the IEDC must require an applicant to agree to an employment number in an incentive contract. Requires that an incentive contract must include an incentive payback provision that allows the IEDC to require an incentive recipient that is in partial noncompliance to repay a proportionate share of the incentive to the IEDC and to require that if a recipient moves, closes, or transfers positions out of Indiana, the IEDC shall recoup the entire incentive provided. Requires a full-time compliance officer in the IEDC to review whether incentive recipients are complying with the incentive agreement. Requires incentive recipients to provide an annual report on compliance with employment goals. Provides that unless a payback provision is waived by the IEDC, the IEDC may not provide an incentive to a person if that person is subject to an incentive payback requirement in Indiana until repayment is made. Provides that a waiver may be granted when a person's failure to meet a condition for receiving an incentive is because of circumstances beyond the recipient's control. Provides that for purposes of the headquarters relocation tax credit an eligible business is required to have annual worldwide revenues of at least ten million dollars (instead of \$100,000,000) if the business relocates to Elkhart County before July 1, 2010. Makes an appropriation.

Effective: July 1, 2009.

Pelath, Tincher, Herrell, Pearson

January 13, 2009, read first time and referred to Committee on Small Business and Economic Development.
February 2, 2009, amended, reported — Do Pass.
February 12, 2009, read second time, amended, ordered engrossed.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1338

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-28-2-4.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 4.1. "Incentive" includes any benefit, grant, loan,
4 money, tax credit, or other thing of value referred to in this article.**
5 SECTION 2. IC 5-28-5-16 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2009]: **Sec. 16. (a) As used in this section, "recapture provision"
8 means language that requires the recipient of an incentive to repay
9 some part of the incentive.**
10 **(b) The corporation may waive or modify a recapture provision
11 of this article or an agreement made with a person to whom the
12 corporation has awarded an incentive, if the corporation
13 determines that the recipient of an incentive awarded by the
14 corporation has failed to meet a condition for receiving the
15 incentive because of circumstances beyond the recipient's control,
16 including:**
17 **(1) natural disaster;**

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- (2) unforeseen industry trends;**
- (3) lack of available labor force; or**
- (4) loss of a major supplier or market.**

SECTION 3. IC 5-28-6-2, AS AMENDED BY P.L.120-2008, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The corporation shall develop and promote programs designed to make the best use of Indiana resources to ensure a balanced economy and continuing economic growth for Indiana, and, for those purposes, may do the following:

(1) Cooperate with federal, state, and local governments and agencies in the coordination of programs to make the best use of Indiana resources.

(2) Receive and expend funds, grants, gifts, and contributions of money, property, labor, interest accrued from loans made by the corporation, and other things of value from public and private sources, including grants from agencies and instrumentalities of the state and the federal government. The corporation:

(A) may accept federal grants for providing planning assistance, making grants, or providing other services or functions necessary to political subdivisions, planning commissions, or other public or private organizations;

(B) shall administer these grants in accordance with the terms of the grants; and

(C) may contract with political subdivisions, planning commissions, or other public or private organizations to carry out the purposes for which the grants were made.

(3) Direct that assistance, information, and advice regarding the duties and functions of the corporation be given to the corporation by an officer, agent, or employee of the executive branch of the state. The head of any other state department or agency may assign one (1) or more of the department's or agency's employees to the corporation on a temporary basis or may direct a division or an agency under the department's or agency's supervision and control to make a special study or survey requested by the corporation.

(b) The corporation shall perform the following duties:

(1) Develop and implement industrial development programs to encourage expansion of existing industrial, commercial, and business facilities in Indiana and to encourage new industrial, commercial, and business locations in Indiana.

(2) Assist businesses and industries in acquiring, improving, and developing overseas markets and encourage international plant

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locations in Indiana. The corporation, with the approval of the governor, may establish foreign offices to assist in this function.

(3) Promote the growth of minority business enterprises by doing the following:

(A) Mobilizing and coordinating the activities, resources, and efforts of governmental and private agencies, businesses, trade associations, institutions, and individuals.

(B) Assisting minority businesses in obtaining governmental or commercial financing for expansion or establishment of new businesses or individual development projects.

(C) Aiding minority businesses in procuring contracts from governmental or private sources, or both.

(D) Providing technical, managerial, and counseling assistance to minority business enterprises.

(4) Assist the office of the lieutenant governor in:

(A) community economic development planning;

(B) implementation of programs designed to further community economic development; and

(C) the development and promotion of Indiana's tourist resources.

(5) Assist the secretary of agriculture and rural development in promoting and marketing of Indiana's agricultural products and provide assistance to the director of the Indiana state department of agriculture.

(6) With the approval of the governor, implement federal programs delegated to the state to carry out the purposes of this article.

(7) Promote the growth of small businesses by doing the following:

(A) Assisting small businesses in obtaining and preparing the permits required to conduct business in Indiana.

(B) Serving as a liaison between small businesses and state agencies.

(C) Providing information concerning business assistance programs available through government agencies and private sources.

(8) Establish a public information page on its current Internet site on the world wide web. The page must provide the following:

(A) By program, cumulative information on the total amount of incentives awarded, the total number of companies that received the incentives and were assisted in a year, and the names and addresses of those companies.

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(B) A mechanism on the page whereby the public may request further information online about specific programs or incentives awarded.

(C) A mechanism for the public to receive an electronic response.

(D) An annual report posted in August each year on the effectiveness of incentives provided under this article. The report:

(i) must include a section specifying each person's compliance with its incentive agreement and any incentive that had to be reduced or paid back as a result of noncompliance with an incentive agreement;

(ii) must include the total incentive provided for each job created for each incentive recipient computed from the date the incentive is granted through June 30 of the year of the report; and

(iii) shall also be submitted to the general assembly in an electronic format under IC 5-14-6.

(9) Require, as a condition of receiving an incentive, subject to IC 5-28-5-16, an agreement by the applicant to the following:

(A) A specific number of individuals who will be employed by the applicant as of a specified date each year.

(B) To file with the compliance officer an annual compliance report detailing the person's compliance, or progress toward compliance, with subdivision (1).

(C) That the person pay back to the state the proportionate share of any incentive that has already been received by the person if the person is found to be employing fewer individuals than agreed to under clause (A). The amount required to be paid back is the percentage of the incentive that equals the number of individuals who are not employed as compared to the number of individuals agreed to be employed.

(D) That the person pay back to the state the entire incentive that has been received by the person if the person moves, closes, or transfers employment positions out of Indiana.

(10) Employ an individual in a full-time position to serve as a compliance officer whose primary duties are to determine and report to the corporation whether each person that receives an incentive complies with the terms and conditions of the

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person's incentive agreement.

(c) The corporation may do the following:

- (1) Disseminate information concerning the industrial, commercial, governmental, educational, cultural, recreational, agricultural, and other advantages of Indiana.
- (2) Plan, direct, and conduct research activities.
- (3) Assist in community economic development planning and the implementation of programs designed to further community economic development.

(d) Except as provided in IC 5-28-5-16, the corporation may not provide an incentive to a person that is being required to pay back any part of an incentive to Indiana, until the date the person has repaid the incentive to Indiana.

SECTION 4. IC 5-28-6-3, AS AMENDED BY P.L.122-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The general assembly declares that the opportunity for the participation of underutilized small businesses, especially women and minority business enterprises, in the biodiesel and ethanol production industries is essential if social and economic parity is to be obtained by women and minority business persons and if the economy of Indiana is to be stimulated as contemplated by this section, IC 6-3.1-27, and IC 6-3.1-28. A recipient of a credit under this chapter is encouraged to purchase goods and services from underutilized small businesses, especially women and minority business enterprises.

(b) The definitions in IC 6-3.1-27 and IC 6-3.1-28 apply throughout this section. A term used in this section that is defined in both IC 6-3.1-27 and IC 6-3.1-28 refers to the term as defined in:

- (1) IC 6-3.1-27 whenever this section applies to the certification of a person for a credit under IC 6-3.1-27; and
- (2) IC 6-3.1-28 whenever this section applies to the certification of a person for a credit under IC 6-3.1-28.

In addition, as used in this section, "person" refers to a taxpayer or a pass through entity.

(c) As used in this section, "minority" means a member of a minority group (as defined in IC 4-13-16.5-1).

(d) As used in this section, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

(e) As used in this section, "women's business enterprise" has the meaning set forth in IC 4-13-16.5-1.3.

(f) A person that:

- (1) begins construction of a facility or an expansion of a facility

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for the production of biodiesel, blended biodiesel, or ethanol in Indiana after February 28, 2005; and

(2) wishes to claim a tax credit with respect to that facility or the expansion of a facility under any combination of IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-7;

must apply to the corporation for a determination of the person's eligibility for the tax credit.

(g) Subject to this section, the corporation shall issue to each qualifying applicant a certification that:

(1) certifies the person as eligible for the tax credits for which the person applied;

(2) identifies the facilities covered by the certification; and

(3) allocates to the person a credit under IC 6-3.1-27-8, IC 6-3.1-27-9, or IC 6-3.1-28-11.

(h) To qualify for certification under subsection (g), a person must do the following:

(1) Submit an application for the credit on the forms and in the manner prescribed by the corporation for the credit that is the subject of the application.

(2) Demonstrate through a business plan and other information presented to the corporation that the level of production proposed by the person is feasible and economically viable. In making a determination under this subdivision, the corporation shall consider:

(A) whether the person is sufficiently capitalized to complete the project;

(B) the person's credit rating;

(C) whether the person has sufficient technical expertise to build and operate a facility; and

(D) other relevant financial information as determined by the corporation.

(i) The corporation shall record the time of filing of each application submitted under this section. The corporation shall grant certifications under this section to qualifying applicants in the chronological order in which the applications for the same type of credit are filed until the maximum allowable credit for that type of credit is fully allocated.

(j) **Except as provided in IC 5-28-5-16**, the corporation ~~may~~ **shall** terminate a certification or reduce an allocation of a credit granted under this section ~~only~~ if the corporation determines, after a hearing, that the person granted the certification or allocation has failed to:

(1) substantially comply with the business plan that is the basis for the certification or allocation; or

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(2) submit the information needed by the corporation to determine whether the person has substantially complied with the business plan that is the basis of the certification or allocation.

The amount that a credit must be reduced or paid back is the percentage of the credit that equals the number of individuals who are not employed as compared to the number of individuals agreed to be employed. If an allocation of a credit is terminated or reduced, **or a credit is paid back**, the unused credit becomes available for allocation to other qualifying applicants in the chronological order in which the applications for the same type of credit are filed until the maximum allowable credit for that type of credit is fully allocated. The corporation may approve an amendment to a business plan or a transfer of a certificate of eligibility in conformity with the terms and conditions specified by the corporation in rules adopted by the corporation under IC 4-22-2.

(k) The corporation shall give the department of state revenue written notice of each action taken under this section.

SECTION 5. IC 6-3.1-30-2, AS AMENDED BY P.L.137-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. As used in this chapter, "eligible business" means a business that:

- (1) is engaged in either interstate or intrastate commerce;
- (2) maintains a corporate headquarters at a location outside Indiana;
- (3) has not previously maintained a corporate headquarters at a location in Indiana;
- (4) had annual worldwide revenues of at least:
 - (A) ~~one hundred ten million dollars (\$100,000,000)~~ **(\$10,000,000) in the case of a business that relocates to Elkhart County before July 1, 2010; or**
 - (B) **one hundred million dollars (\$100,000,000) in the case of a business that is not described in clause (A);**
 for the taxable year immediately preceding the business's application for a tax credit under section 12 of this chapter; and
- (5) commits contractually to relocating its corporate headquarters to Indiana.

SECTION 6. [EFFECTIVE JULY 1, 2009] (a) **There is appropriated to a county economic development corporation located in each county that had an unemployment rate of more than fourteen percent (14%) on December 31, 2008, as certified by the Indiana department of workforce development, two hundred fifty thousand dollars (\$250,000) from the state general fund. The**

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1 **appropriation must be used by the county economic development**
2 **corporation to promote job creation within the county. The**
3 **appropriation is for the state fiscal year beginning July 1, 2009,**
4 **and ending June 30, 2010.**

5 **(b) This SECTION expires July 1, 2010.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1338, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 12, delete ", plus interest,".
 Page 4, line 19, delete ", plus".
 Page 4, line 20, delete "interest,".
 Page 4, delete lines 22 through 23.
 Page 4, line 38, delete ":".
 Page 4, line 39, delete "(1)".
 Page 4, run in lines 38 through 39.
 Page 4, line 40, delete "; or" and insert ".".
 Page 4, delete lines 41 through 42.
 Page 5, delete lines 1 through 3.

and when so amended that said bill do pass.

(Reference is to HB 1338 as introduced.)

RESKE, Chair

Committee Vote: yeas 7, nays 5.

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1338 be amended to read as follows:

Page 1, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 2. IC 5-28-5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 16. (a) As used in this section, "recapture provision" means language that requires the recipient of an incentive to repay some part of the incentive.**

(b) The corporation may waive or modify a recapture provision of this article or an agreement made with a person to whom the corporation has awarded an incentive, if the corporation determines that the recipient of an incentive awarded by the corporation has failed to meet a condition for receiving the incentive because of circumstances beyond the recipient's control, including:

(1) natural disaster;

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- (2) unforeseen industry trends;**
- (3) lack of available labor force; or**
- (4) loss of a major supplier or market."**

Page 4, line 3, after "Require" insert ",".

Page 4, line 3, after "incentive," insert "**subject to IC 5-28-5-16,**".

Page 4, line 35, delete "The" and insert "**Except as provided in IC 5-28-5-16,** the".

Page 6, line 20, delete "The" and insert "**Except as provided in IC 5-28-5-16,** the".

Page 6, line 21, strike "only".

Renumber all SECTIONS consecutively.

(Reference is to HB 1338 as printed February 3, 2009.)

PELATH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1338 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration and to make an appropriation.

Page 6, after line 42, begin a new paragraph and insert:

"SECTION 4. [EFFECTIVE JULY 1, 2009] **(a) There is appropriated to a county economic development corporation located in each county that had an unemployment rate of more than fourteen percent (14%) on December 31, 2008, as certified by the Indiana department of workforce development, two hundred fifty thousand dollars (\$250,000) from the state general fund. The appropriation must be used by the county economic development corporation to promote job creation within the county. The appropriation is for the state fiscal year beginning July 1, 2009, and ending June 30, 2010.**

(b) This SECTION expires July 1, 2010."

(Reference is to HB 1338 as printed February 3, 2009.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1338 be amended to read as follows:

Page 6, after line 42, begin a new paragraph and insert:

"SECTION 4. IC 6-3.1-30-2, AS AMENDED BY P.L.137-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. As used in this chapter, "eligible business" means a business that:

- (1) is engaged in either interstate or intrastate commerce;
- (2) maintains a corporate headquarters at a location outside Indiana;
- (3) has not previously maintained a corporate headquarters at a location in Indiana;
- (4) had annual worldwide revenues of at least:
 - (A) ~~one hundred ten~~ million dollars ~~(\$100,000,000)~~ **(\$10,000,000) in the case of a business that relocates to Elkhart County before July 1, 2010; or**
 - (B) **one hundred million dollars (\$100,000,000) in the case of a business that is not described in clause (A);**

for the taxable year immediately preceding the business's application for a tax credit under section 12 of this chapter; and

- (5) commits contractually to relocating its corporate headquarters to Indiana."

Re-number all SECTIONS consecutively.

(Reference is to HB 1338 as printed February 3, 2009.)

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